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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of)

Geographic Partitioning and Spectrum)

Disaggregation by Commercial)

Mobile Radio Services Licensees)

Implementation of Section 257 of the)

Communications Act -- Elimination)

of Market Entry Barriers)

WT Docket No. 96-148 /

GN Docket No. 96-113

To: The Commission

COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

THE AMERICAN PETROLEUM INSTITUTE

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SUMMARY

API believes that the proposal of the Federal Communications Commission ("Commission") to allow geographic partitioning and spectrum disaggregation by PCS licensees must be accompanied by certain safeguards to ensure that the conveyance of PCS license rights to countless entities with limited financial resources does not undermine the effectiveness of the Commission's microwave relocation cost-sharing plan.

In particular, API urges the Commission to require that PCS auction winners retain all cost-sharing obligations associated with their entire original license areas and spectrum blocks. Otherwise, an enhanced rate of default under the cost-sharing plan by PCS license transferees, coupled with a sheer increase in the total number of PCS licensees in every market area, could impede the ability of PCS relocators and self-relocating incumbents to obtain reimbursement. This, in turn, may deter potential relocators from initiating the system-wide relocations that the Commission's cost-sharing rules were intended to promote.

If the Commission nonetheless determines that PCS license transferees may obtain cost-sharing responsibilities, it should, at the very least, require original licensees to guarantee payment in the event of default by new entrants and prohibit transferees of non-entrepreneurial PCS licenses from satisfying their cost-sharing obligations with installment payments.

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COMMENTS
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The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits the following Comments in response to the Commission's Notice of Proposed Rule Making ("Notice")^{1/} that looks toward authorizing geographic partitioning and spectrum disaggregation in the near term by broadband Personal Communications Service ("PCS") licensees.

^{1/} 61 Fed. Reg. 38693 (July 25, 1996).

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. API's Telecommunications Committee is supported and sustained by licensees that are authorized by the Commission to operate, among other telecommunications facilities, point-to-point and point-to-multipoint systems in the Private Operational-Fixed Microwave Service ("POFS"). API's members utilize POFS systems to serve a variety of vital telecommunications requirements, including communications between remote oil and gas exploration and production sites, for supervisory control and data acquisition ("SCADA") systems, to communicate with refineries and to extend circuits to remote pipeline pump and compressor stations. The oil and gas industries were

among the pioneers in the development of private microwave, utilizing their systems to monitor and operate petroleum and natural gas pipelines.

3. Accordingly, API has participated in all of the Commission's major rule making proceedings addressing private microwave use of the spectrum. Consistent with this active involvement in telecommunications regulatory issues, API has participated in nearly every phase of the Commission's Docket Nos. 90-314 and 92-9, which led to the reallocation of spectrum in the 2 GHz band for emerging technologies, including PCS, and to the adoption of PCS reaccommodation provisions for those POFS licensees required to vacate their assignments. API has also been actively involved in WT Docket No. 95-157, the Commission's proceeding to establish a cost-sharing mechanism to allocate more fairly among PCS licensees the costs of relocating microwave incumbents to alternative spectrum.

II. COMMENTS

A. PCS Auction Winners Should Retain Ultimate Responsibility for the Cost-Sharing Obligations of the Entities to Whom They Partition and/or Disaggregate Their Licenses.

4. In its Notice, the Commission proposed to allow broadband PCS licensees to partition their license areas

geographically along county lines and to disaggregate their spectrum in blocks no smaller than 1 MHz. In support of this proposal, the Commission noted that its revised rules would enable small businesses, rural telephone companies and businesses owned by members of minority groups and women "to overcome entry barriers through the creation of smaller, less capital-intensive licenses that are within reach of smaller entities." Notice at ¶ 11. Similarly, the Commission stated that it seeks to facilitate market entry by parties that lack the financial resources to participate successfully in PCS auctions. Notice at ¶¶ 15, 20 and 37.

5. While API fully supports the Commission's efforts to open the PCS market to small businesses and other entities facing barriers to entry, it believes that any such measures must be accompanied by provisions that safeguard the integrity of the microwave relocation cost-sharing plan recently adopted by the Commission in WT Docket No. 95-157.^{2/} Under this plan, PCS licensees that relocate microwave links outside their license areas or licensed frequencies may obtain reimbursement on a *pro rata* basis from later-entrant PCS licensees that benefit from the

^{2/} See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, First Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 95-157, FCC 96-16 (adopted April 25, 1996).

clearing of their spectrum.^{3/} PCS licensees that are eligible to pay for their licenses in installments may also fulfill their cost-sharing obligations with installment payments.^{4/} In addition, the Commission has tentatively concluded that microwave incumbents who pay their own relocation costs should be permitted to participate in the cost-sharing plan.^{5/}

6. The cost-sharing plan has been heralded by virtually all interested parties, as well as the Commission, as a much-needed measure to promote system-wide relocation of extensive microwave systems and, as a result, the prompt deployment of PCS. Unfortunately, absent further clarification, the rule changes contemplated by the Notice threaten to undermine the effectiveness of this important measure. With respect to cost-sharing obligations, the Notice proposes only that:

[A] new entrant PCS licensee who gains its license through partitioning or disaggregation should be treated as any other subsequent PCS licensee for purposes of the cost-sharing plan, including eligibility for installment plan payments if the transferee would be eligible for an installment plan equivalent to that enjoyed by the transferring licensee.

^{3/} Id. at ¶¶ 69-71.

^{4/} Id. at ¶ 75.

^{5/} Id. at ¶ 99.

Notice at ¶ 64. The Commission does not explicitly address whether original licensees would retain any responsibility for the cost-sharing obligations associated with the license rights that they transfer to new licensees. Presumably, the Commission intends to allow PCS auction winners to carve up their cost-sharing responsibilities along with their license areas and spectrum blocks. Notably, however, the proposed rules do not place any minimum financial requirements upon potential recipients of partitioned or disaggregated licenses. Nor do they discuss what would happen if these new entrant licensees were to default upon their obligations under the cost-sharing plan.

7. Because the amended rules would make PCS licenses available to parties that are unable to compete successfully at PCS auctions, there is reason to believe that at least some of these license transferees would have more limited financial resources than the original PCS auction winners. As a result, these transferees would be more likely to default upon all or part of their reimbursement obligations, thereby denying PCS relocators and self-relocating incumbents the reimbursement payments to which they are entitled. In turn, potential relocators could become more hesitant to embark upon the system-wide relocations that the Commission's cost-sharing rules were intended to promote.

8. Another potential impediment to cost-sharing that would be created by the Commission's proposed partitioning and disaggregation rules stems from the fact that initial relocators likely would be required to obtain reimbursement from many more parties than originally anticipated. Whereas the current rules contemplate no more than six PCS licensees in a given service area, the amended rules would open each market to an unlimited number of licensees. This could result in considerable delays in the time required for relocators to obtain full compensation from later market entrants. Such delays might well be exacerbated by an increase in the number of entities that are able to take advantage of the cost-sharing plan's installment payment option.

9. To avoid these problems, API believes that PCS auction winners that partition and/or disaggregate their licenses should retain all cost-sharing reimbursement responsibilities associated with their entire original license areas and spectrum blocks.^{6/} Original licensees

^{6/} As an additional matter, the Commission should clarify that the recipients of partitioned and/or disaggregated licenses -- like original PCS auction winners -- are required to protect microwave incumbents from harmful interference in accordance with the Commission's rules. Further, in instances where it is difficult to determine with certainty whether the original licensee or a license transferee is responsible for the interference, API believes that the original licensee should have ultimate responsibility for resolving the problem.

would, of course, be free to seek compensation for this continuing reimbursement obligation from the entities to whom they transfer their PCS license rights, either at the time of the transfer or upon actual dissemination of cost-sharing payments.

10. This approach would be consistent with the Commission's proposal for ensuring that the transfer of PCS licenses does not result in default upon auction-related obligations stemming from the Commission's installment payment plan for entrepreneurs. Recognizing the potential for such default by PCS license transferees, the Commission sought comment on whether PCS auction winners should have a continuing obligation with respect to their entire original licenses for outstanding auction-related payments. Notice at ¶¶ 26 and 47. API recommends that the Commission extend the same policy to the cost-sharing obligations associated with the original licenses of PCS auction winners.

11. At the very least, API urges the Commission to require original PCS licensees to act as guarantors of the cost-sharing obligations incurred by new entrant licensees, with original licensees retaining ultimate responsibility in the event of default. In this way, PCS auction winners would have an incentive to ensure that the entities to whom they transfer their license rights are financially sound.

At the same time, PCS relocators and self-relocating microwave incumbents would be able to maintain confidence in the integrity of the cost-sharing plan.

B. The Commission Should Clarify That Transferees of Non-Entrepreneurial PCS License Rights May Not Pay Their Cost-Sharing Obligations in Installments.

12. Should the Commission decline to require that original PCS auction winners retain all cost-sharing obligations, API urges the Commission to adopt provisions to prevent new entrants from abusing the installment payment option available to entrepreneurial licensees under the cost-sharing plan. Otherwise, the extensive delays suffered by original relocators in obtaining full reimbursement will dilute the Commission's cost-sharing plan and impede the goals of system-wide relocation and rapid PCS deployment.

13. As noted above, the Commission has proposed that new entrant PCS licensees may satisfy their cost-sharing obligations with installment payments "if the transferee would be eligible for an installment plan equivalent to that enjoyed by the transferring licensee." Notice at ¶ 64. API supports this proposal to the extent it means that: (1) if the transferring licensee was not eligible for an installment plan (as would be the case with all non-entrepreneurial block licensees), the transferee also would

be ineligible, regardless of whether it qualifies as an entrepreneur or small business under the Commission's rules; and (2) the transferee of an entrepreneurial block license should not be entitled to a more generous installment payment plan than that available to the original licensee.

14. Without such restrictions, the bulk of each and every PCS license auctioned by the Commission could ultimately rest in the hands of entities that are entitled to participate in the installment plan and thereby drag out their cost-sharing obligations over a ten-year period. That certainly is not what the Commission intended when it made the installment plan available only to a small subset of original PCS licensees.

III. CONCLUSION

15. API generally supports the Commission's plan to allow partitioning and disaggregation of PCS licenses. However, API is concerned about the Commission's proposed application of the cost-sharing rules to PCS license transferees. In particular, API believes that certain safeguards are needed to ensure that the amended rules do not make it more burdensome and/or time-consuming for PCS relocators and self-relocating microwave incumbents to

obtain the reimbursement to which they are entitled under the cost-sharing plan.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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